

REFERENCE TITLE: drug exposed infants

State of Arizona
House of Representatives
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HB 2296

Introduced by
Representatives Yarbrough, Barnes, Gray C, Mason, Quelland: Allen J,
Biggs, Boone, Burges, Groe, McLain, Nichols, Paton, Pierce, Stump, Weiers
JP

AN ACT

AMENDING SECTIONS 8-533, 8-819, 8-846 AND 13-3620, ARIZONA REVISED STATUTES;
AMENDING TITLE 13, CHAPTER 36, ARIZONA REVISED STATUTES, BY ADDING SECTION
13-3626; RELATING TO DRUG EXPOSED INFANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-533, Arizona Revised Statutes, is amended to
3 read:

4 8-533. Petition; who may file; grounds

5 A. Any person or agency that has a legitimate interest in the welfare
6 of a child, including, but not limited to, a relative, a foster parent, a
7 physician, the department of economic security or a private licensed child
8 welfare agency, may file a petition for the termination of the parent-child
9 relationship alleging grounds contained in subsection B of this section.

10 B. Evidence sufficient to justify the termination of the parent-child
11 relationship shall include any one of the following, and in considering any
12 of the following grounds, the court shall also consider the best interests of
13 the child:

14 1. That the parent has abandoned the child.

15 2. That the parent has neglected or wilfully abused a child. This
16 abuse includes serious physical or emotional injury or situations in which
17 the parent knew or reasonably should have known that a person was abusing or
18 neglecting a child.

19 3. That the parent is unable to discharge the parental
20 responsibilities because of mental illness, mental deficiency or a history of
21 chronic abuse of dangerous drugs, controlled substances or alcohol and there
22 are reasonable grounds to believe that the condition will continue for a
23 prolonged indeterminate period.

24 4. That the parent is deprived of civil liberties due to the
25 conviction of a felony if the felony of which that parent was convicted is of
26 such nature as to prove the unfitness of that parent to have future custody
27 and control of the child, ~~including murder of another child of the parent,~~
28 ~~manslaughter of another child of the parent or aiding or abetting or~~
29 ~~attempting, conspiring or soliciting to commit murder or manslaughter of~~
30 ~~another child of the parent,~~ or if the sentence of that parent is of such
31 length that the child will be deprived of a normal home for a period of
32 years.

33 5. That the potential father failed to file a paternity action within
34 thirty days of completion of service of notice prescribed in section 8-106,
35 subsection G.

36 6. That the putative father failed to file a notice of claim of
37 paternity as prescribed in section 8-106.01.

38 7. That the parents have relinquished their rights to a child to an
39 agency or have consented to the adoption.

40 8. That the child is being cared for in an out-of-home placement under
41 the supervision of the juvenile court, the division or a licensed child
42 welfare agency, that the agency responsible for the care of the child has
43 made a diligent effort to provide appropriate reunification services and that
44 either of the following circumstances exists:

(a) The child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to court order or voluntary placement pursuant to section 8-806 and the parent has substantially neglected or wilfully refused to remedy the circumstances ~~which~~ THAT cause the child to be in an out-of-home placement.

(b) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to section 8-806, the parent has been unable to remedy the circumstances ~~which~~ THAT cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

9. That the identity of the parent is unknown and continues to be unknown following three months of diligent efforts to identify and locate the parent.

10. That the parent has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause.

11. That all of the following are true:

(a) The child was cared for in an out-of-home placement pursuant to court order.

(b) The agency responsible for the care of the child made diligent efforts to provide appropriate reunification services.

(c) The child, pursuant to court order, was returned to the legal custody of the parent from whom the child had been removed.

(d) Within eighteen months after the child was returned, pursuant to court order, the child was removed from that parent's legal custody, the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency and the parent is currently unable to discharge parental responsibilities.

~~C.~~ **C. EVIDENCE THAT THE PARENT HAS BEEN CONVICTED OF A FELONY INVOLVING A CHILD VICTIM CONSTITUTES PRIMA FACIE EVIDENCE THAT GROUNDS FOR TERMINATION EXIST.**

~~D.~~ **D.** In considering the grounds for termination prescribed in subsection B, paragraph 8 or 11 of this section, the court shall consider the availability of reunification services to the parent and the participation of the parent in these services.

~~D.~~ **E.** In considering the grounds for termination prescribed in subsection B, paragraph 8 of this section, the court shall not consider the first sixty days of the initial out-of-home placement pursuant to section 8-806 in the cumulative total period.

Sec. 2. Section 8-819, Arizona Revised Statutes, is amended to read:

8-819. Determination of neglect; presumptions

A. In determining if a child is neglected, consideration shall be given to:

1 1. The drug or alcohol abuse of the child's parent, guardian or
2 custodian.

3 2. The use by the mother of ~~a dangerous drug, a narcotic drug or~~
4 alcohol during pregnancy if the child, at birth or within a year after birth,
5 is demonstrably adversely affected by this use. ~~For the purposes of this~~
6 ~~paragraph, "dangerous drug" and "narcotic drug" have the same meaning~~
7 ~~prescribed in section 13-3401.~~

8 B. IT IS PRESUMED THAT A CHILD IS NEGLECTED IF THE CHILD TESTS
9 POSITIVE WITHIN SEVENTY-TWO HOURS OF BIRTH FOR A DANGEROUS DRUG OR NARCOTIC
10 DRUG, OR A METABOLITE OF A DANGEROUS DRUG OR NARCOTIC DRUG, UNLESS THE DRUG
11 OR THE METABOLITE IS THE RESULT OF MEDICAL TREATMENT ADMINISTERED TO THE
12 MOTHER OF THE INFANT OR TO THE INFANT.

13 C. IT IS PRESUMED THAT A CHILD IS NEGLECTED IF THE CHILD SUFFERS AN
14 INJURY AS DEFINED IN SECTION 13-3626 WITHIN ONE YEAR OF BIRTH.

15 Sec. 3. Section 8-846, Arizona Revised Statutes, is amended to read:
16 8-846. Services provided to the child and family

17 A. Except as provided in subsection B of this section, if the child
18 has been removed from the home, the court shall order the department to make
19 reasonable efforts to provide services to the child and the child's parent.

20 B. The court shall consider the following factors and reunification
21 services are not required to be provided if the court finds by clear and
22 convincing evidence that:

23 1. One or more of the following aggravating circumstances exist:

24 (a) A party to the action provides a verified affidavit that states
25 that a reasonably diligent search has failed to identify and locate the
26 parent within three months after the filing of the dependency petition or the
27 parent has expressed no interest in reunification with the child for at least
28 three months after the filing of the dependency petition.

29 (b) The parent or guardian is suffering from a mental illness or
30 mental deficiency of such magnitude that it renders the parent or guardian
31 incapable of benefitting from the reunification services. This finding shall
32 be based on competent evidence from a psychologist or physician that
33 establishes that, even with the provision of reunification services, the
34 parent or guardian is unlikely to be capable of adequately caring for the
35 child within twelve months after the date of the child's removal from the
36 home.

37 (c) The child previously has been removed and adjudicated dependent
38 due to physical ABUSE, NEGLECT or sexual abuse. After the adjudication the
39 child was returned to the custody of the parent or guardian and then
40 subsequently removed within ~~eighteen~~ TWENTY-FOUR months due to additional
41 physical ABUSE, NEGLECT or sexual abuse.

42 (d) A child is the victim of serious physical or emotional injury by
43 the parent or guardian or by any person known by the parent or guardian, if
44 the parent or guardian knew or reasonably should have known that the person
45 was abusing the child.

1 (e) The parent's rights to another child have been terminated, the
2 parent has not successfully addressed the issues that led to the termination
3 and the parent is unable to discharge parental responsibilities.

4 (f) After a finding that a child is dependent, all of the following
5 are true:

6 (i) A child has been removed from the parent or guardian on at least
7 two previous occasions.

8 (ii) Reunification services were offered or provided to the parent or
9 guardian after the removal.

10 (iii) The parent or guardian is unable to discharge parental
11 responsibilities.

12 2. The parent or guardian of a child has been convicted of murder or
13 manslaughter of a child, or of sexual abuse, sexual assault of a child,
14 sexual conduct with a minor, molestation of a child, commercial sexual
15 exploitation of a minor, sexual exploitation of a minor, or luring a minor
16 for sexual exploitation.

17 3. The parent or guardian of a child has been convicted of aiding or
18 abetting or attempting, conspiring or soliciting to commit any of the crimes
19 listed in paragraph 2 ~~of this subsection~~.

20 Sec. 4. Section 13-3620, Arizona Revised Statutes, is amended to read:

21 13-3620. Duty to report abuse, physical injury, neglect and
22 denial or deprivation of medical or surgical care or
23 nourishment of minors; medical records; exception;
24 violation; classification; definitions

25 A. Any person who reasonably believes that a minor is or has been the
26 victim of physical injury, abuse, child abuse, a reportable offense or
27 neglect that appears to have been inflicted on the minor by other than
28 accidental means or that is not explained by the available medical history as
29 being accidental in nature or who reasonably believes there has been a denial
30 or deprivation of necessary medical treatment or surgical care or nourishment
31 with the intent to cause or allow the death of an infant who is protected
32 under section 36-2281 shall immediately report or cause reports to be made of
33 this information to a peace officer or to child protective services in the
34 department of economic security, except if the report concerns a person who
35 does not have care, custody or control of the minor, the report shall be made
36 to a peace officer only. A member of the clergy, christian science
37 practitioner or priest who has received a confidential communication or a
38 confession in that person's role as a member of the clergy, christian science
39 practitioner or a priest in the course of the discipline enjoined by the
40 church to which the member of the clergy, christian science practitioner or
41 priest belongs may withhold reporting of the communication or confession if
42 the member of the clergy, christian science practitioner or priest determines
43 that it is reasonable and necessary within the concepts of the religion.
44 This exemption applies only to the communication or confession and not to
45 personal observations the member of the clergy, christian science

practitioner or priest may otherwise make of the minor. For the purposes of this subsection, "person" means:

1. Any physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient.

2. Any peace officer, member of the clergy, priest or christian science practitioner.

3. The parent, stepparent or guardian of the minor.

4. School personnel or domestic violence victim ~~advocate~~ ADVOCATES who develop the reasonable belief in the course of their employment.

5. Any other person who has responsibility for the care or treatment of the minor.

B. A report is not required under this section for conduct prescribed by sections 13-1404 and 13-1405 if the conduct involves only minors who are fourteen, fifteen, sixteen or seventeen years of age and there is nothing to indicate that the conduct is other than consensual.

C. If a physician, psychologist or behavioral health professional receives a statement from a person other than a parent, stepparent, guardian or custodian of the minor during the course of providing sex offender treatment that is not court ordered or that does not occur while the offender is incarcerated in the state department of corrections or the department of juvenile corrections, the physician, psychologist or behavioral health professional may withhold the reporting of that statement if the physician, psychologist or behavioral health professional determines it is reasonable and necessary to accomplish the purposes of the treatment.

D. Reports shall be made immediately by telephone or in person and shall be followed by a written report within seventy-two hours. The reports shall contain:

1. The names and addresses of the minor and the minor's parents or the person or persons having custody of the minor, if known.

2. The minor's age and the nature and extent of the minor's abuse, child abuse, physical injury or neglect, including any evidence of previous abuse, child abuse, physical injury or neglect.

3. Any other information that the person believes might be helpful in establishing the cause of the abuse, child abuse, physical injury or neglect.

E. A health care professional who is regulated pursuant to title 32 and who, after a routine newborn physical assessment of a newborn infant's health status or following notification of positive toxicology screens of a newborn infant, reasonably believes that the newborn infant may be affected by the presence of alcohol or a drug listed in section 13-3401 shall immediately report this information, or cause a report to be made, to A PEACE OFFICER AND TO child protective services in the department of economic security. For the purposes of this subsection, "newborn infant" means a newborn infant who is under thirty days of age.

1 F. Any person other than one required to report or cause reports to be
2 made under subsection A of this section who reasonably believes that a minor
3 is or has been a victim of abuse, child abuse, physical injury, a reportable
4 offense or neglect may report the information to a peace officer or to child
5 protective services in the department of economic security, except if the
6 report concerns a person who does not have care, custody or control of the
7 minor, the report shall be made to a peace officer only.

8 G. A person who has custody or control of medical records of a minor
9 for whom a report is required or authorized under this section shall make the
10 records, or a copy of the records, available to a peace officer or child
11 protective services worker investigating the minor's neglect, child abuse,
12 physical injury, ~~or~~ abuse OR DRUG EXPOSURE AS AN INFANT on written request
13 for the records signed by the peace officer or child protective services
14 worker. Records disclosed pursuant to this subsection are confidential and
15 may be used only in a judicial or administrative proceeding or investigation
16 resulting from a report required or authorized under this section.

17 H. When telephone or in-person reports are received by a peace
18 officer, the officer shall immediately notify child protective services in
19 the department of economic security and make the information available to
20 ~~them~~ CHILD PROTECTIVE SERVICES. Notwithstanding any other statute, when
21 child protective services receives these reports by telephone or in person,
22 it shall immediately notify a peace officer in the appropriate jurisdiction.

23 I. Any person who is required to receive reports pursuant to
24 subsection A of this section may take or cause to be taken photographs of the
25 minor and the vicinity involved. Medical examinations of the involved minor
26 may be performed.

27 J. A person who furnishes a report, information or records required or
28 authorized under this section, or a person who participates in a judicial or
29 administrative proceeding or investigation resulting from a report,
30 information or records required or authorized under this section, is immune
31 from any civil or criminal liability by reason of that action unless the
32 person acted with malice or unless the person has been charged with or is
33 suspected of abusing or neglecting the child or children in question.

34 K. Except for the attorney client privilege or the privilege under
35 subsection L of this section, no privilege applies to any:

36 1. Civil or criminal litigation or administrative proceeding in which
37 a minor's neglect, dependency, abuse, child abuse, physical injury or
38 abandonment is an issue.

39 2. Judicial or administrative proceeding resulting from a report,
40 information or records submitted pursuant to this section.

41 3. Investigation of a minor's child abuse, physical injury, neglect
42 or abuse conducted by a peace officer or child protective services in the
43 department of economic security.

44 L. In any civil or criminal litigation in which a child's neglect,
45 dependency, physical injury, abuse, child abuse or abandonment is an issue, a

1 member of the clergy, a christian science practitioner or a priest shall not,
2 without his consent, be examined as a witness concerning any confession made
3 to him in his role as a member of the clergy, a christian science
4 practitioner or a priest in the course of the discipline enjoined by the
5 church to which he belongs. Nothing in this subsection discharges a member
6 of the clergy, a christian science practitioner or a priest from the duty to
7 report pursuant to subsection A of this section.

8 M. If psychiatric records are requested pursuant to subsection G of
9 this section, the custodian of the records shall notify the attending
10 psychiatrist, who may excise from the records, before they are made
11 available:

- 12 1. Personal information about individuals other than the patient.
- 13 2. Information regarding specific diagnosis or treatment of a
14 psychiatric condition, if the attending psychiatrist certifies in writing
15 that release of the information would be detrimental to the patient's health
16 or treatment.

17 N. If any portion of a psychiatric record is excised pursuant to
18 subsection M of this section, a court, upon application of a peace officer or
19 child protective services worker, may order that the entire record or any
20 portion of the record that contains information relevant to the reported
21 abuse, child abuse, physical injury or neglect be made available to the peace
22 officer or child protective services worker investigating the abuse, child
23 abuse, physical injury or neglect.

24 O. A person who violates this section is guilty of a class 1
25 misdemeanor, except if the failure to report involves a reportable offense,
26 the person is guilty of a class 6 felony.

27 P. For the purposes of this section:

- 28 1. "Abuse" has the same meaning prescribed in section 8-201.
- 29 2. "Child abuse" means child abuse pursuant to section 13-3623.
- 30 3. "Neglect" has the same meaning prescribed in section 8-201.
- 31 4. "Reportable offense" means any of the following:
32 (a) Any offense listed in chapters 14 and 35.1 of this title or
33 section 13-3506.01.
34 (b) Surreptitious photographing, videotaping, filming or digitally
35 recording of a minor pursuant to section 13-3019.
36 (c) Child prostitution pursuant to section 13-3212.
37 (d) Incest pursuant to section 13-3608.

38 Sec. 5. Title 13, chapter 36, Arizona Revised Statutes, is amended by
39 adding section 13-3626, to read:

40 13-3626. Drug exposed infants; classification; definitions

41 A. IT IS UNLAWFUL FOR A WOMAN TO GIVE BIRTH TO AN INFANT WHO EITHER:
42 1. TESTS POSITIVE WITHIN SEVENTY-TWO HOURS OF BIRTH FOR A DANGEROUS
43 DRUG OR NARCOTIC DRUG OR A METABOLITE OF A DANGEROUS DRUG OR NARCOTIC DRUG,
44 UNLESS THE DRUG OR THE METABOLITE IS THE RESULT OF MEDICAL TREATMENT
45 ADMINISTERED TO THE MOTHER OF THE INFANT OR TO THE INFANT.

1 2. MANIFESTS AN INJURY WITHIN ONE YEAR OF BIRTH THAT IS A DIRECT
2 RESULT OF THE MOTHER'S USE OF A DANGEROUS DRUG OR NARCOTIC DRUG, UNLESS THE
3 DRUG WAS THE RESULT OF MEDICAL TREATMENT ADMINISTERED TO THE MOTHER OF THE
4 INFANT OR TO THE INFANT.

5 B. A VIOLATION OF SUBSECTION A, PARAGRAPH 1 OF THIS SECTION IS A CLASS
6 4 FELONY. A VIOLATION OF SUBSECTION A, PARAGRAPH 2 OF THIS SECTION IS A
7 CLASS 3 FELONY, UNLESS THE INJURY RESULTS IN THE DEATH OF THE CHILD, IN WHICH
8 CASE IT IS A CLASS 2 FELONY.

9 C. FOR THE PURPOSES OF THIS SECTION:

10 1. "DANGEROUS DRUG" HAS THE SAME MEANING PRESCRIBED IN SECTION
11 13-3401.

12 2. "INJURY" INCLUDES SERIOUS PHYSICAL INJURY OR WITHDRAWAL FROM
13 INVOLUNTARY DRUG DEPENDENCY.

14 3. "NARCOTIC DRUG" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-3401.